

REMARKS

A Petition for Extension of Time is being concurrently filed with this Reply. Thus, this Reply is being timely filed.

Status of the Claims

In the present Reply, no claims are being added, canceled or amended. Thus, a listing of the pending claims is not necessary.

Claims 1-20 are pending in the present application, wherein claims 3-5 are withdrawn from consideration.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw the only provisional rejection and allow the currently pending claims.

Issues of Double Patenting

Claims 1, 2 and 6-20 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of co-pending Application No. 10/768,440 (hereinafter "the '440 Application") (see paragraph 2 of the outstanding Office Action). Applicants respectfully traverse.

Since this is the only issue in the Office Action, Applicants respectfully request that the Examiner withdraw this provisional rejection and convert any provisional rejection in the '440 Application into a non-provisional rejection. See M.P.E.P. § 822.01 and § 804, subsection I.B. M.P.E.P. § 822.01 states:

The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in one of the applications. **>See MPEP § 804, subsection I.B. when the "provisional" double patenting rejection is the only rejection remaining in at least one application.<

Also, Applicants note that the '440 Application has a U.S. filing date of February 2, 2004, which is later than the U.S. filing of this application (September 29, 2003). Thus, Applicants respectfully submit that any provisional obviousness-type double patenting rejection would be more appropriate in the '440 Application, since the '440 Application would have a patent term that expires at a later date versus this application. Further, under M.P.E.P. § 822.01 and § 804, subsection I.B., Applicants respectfully request withdrawal of the instant provisional rejection.

Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

Rejoinder Requested

Once the instant provisional rejection is withdrawn, Applicants respectfully request rejoinder of the species recited in withdrawn claims 3-5.

Conclusion

A full and complete response has been made to all issues as cited in the Office Action. Applicants have taken substantial steps in efforts to advance prosecution of the present

Application No. 10/671,939
Art Unit 1752
After Final Office Action of October 7, 2005

Docket No.: 2870-0267P

application. Thus, Applicants respectfully request that a timely Notice of Allowance issue for the present case.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Eugene T. Perez (Reg. No. 48,501) at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: April 6, 2006

Respectfully submitted,

By 

Marc S. Weiner
Registration No.: 32,181
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant